IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10821 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BRIJLAL NANDKISHORE SONI (MAHESHWARI MARVADI)
Versus
COMMISSIONER OF POLICE- AHMEDABAD CITY AND OTHERS

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Appearance :
MR KARTIK V PANDYA for Petitioner.
RULE SERVED for Respondent(s) : 1 - 2.
MR ND GOHIL, AGP for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 05/07/2006

ORAL JUDGMENT

By filing this petition, the petitioner, who is detained under provisions of Prevention of Anti Social Activities Act (“PASA” for short), has challenged his detention order dated 13-09-2005, by which he is detained as a “dangerous person” under PASA. Along with the order of

detention, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference to six criminal cases pending against the petitioner. All these cases are registered against the petitioner under Sections 379 read with Section 114 of the Indian Penal Code, as it is alleged that the petitioner is indulging in theft of spare-parts of the scooter. It is alleged that the petitioner is committing theft along with other people and because of the activity of the petitioner public order is disturbed. The detaining authority also recorded the statements of witnesses, whose names have not been disclosed. After arriving at subjective satisfaction, the detaining authority has passed the order of detention against the petitioner.

Mr.Kartik Pandya, learned advocate for the petitioner submitted that simply because the cases are registered against the petitioner, it cannot be said that the petitioner has violated public order and some more material is required to justify the stand taken by the detaining authority that the activity of the petitioner is prejudicial to public order. He further submitted that co-detenue of the petitioner [Mohmad Irfan @ Salim S/o. Yunusbhai Nurani (Memon)], who is also accused in all these cases has been released by this Court (Coram : K.M.Mehta, J.) vide order dated 18/11/2005 passed in Special Civil Application No.20312/2005. In that case, after relying upon the judgement of the Supreme Court in **Darpan Kumar Sharma alias Dharban Kumar Sharma V. State of Tamil Nadu and Others**, reported in **AIR 2003 SUPREME COURT 971**, as well as upon the decision of the Division Bench of this Court in **A.J.Solanki V. Police Commissioner, Surat** reported in 2000 (1) GLH 393, learned Single Judge has quashed the order of detention.

It is not in dispute that the present petitioner is the co-accused of the petitioner of Special Civil Application No.20312/2005 in connection

with aforesaid cases. Therefore, when the detention of the aforesaid detenu is quashed and set aside by this Court (Coram : K.M.Mehta, J.), detention order of the present petitioner is also required to be quashed and set aside.

Considering the aforesaid aspect of the matter as well as considering the fact that the petitioner is detained on the basis of pending criminal cases, which are individual in nature, order of detention passed against the present petitioner is required to be quashed, as it cannot be said that the petitioner has violated public order and at the most it can be said that the petitioner has violated law and order.

For the foregoing reasons, this petition is allowed. Order of detention dated 13-9-2005 is quashed and set aside. Petitioner – Brijlal Nandkishore Soni (Maheshwari Marwadi) is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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